


**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. :	2022/2022
Date of filing complaint:	05.05.2022
First date of hearing:	25.08.2022
Date of decision :	02.02.2023

Sh. Mukesh Sharma R/O: Ca/42a Shalimar Bagh New Delhi 110088	<b>Complainant</b>
 versus	
Experion Developers Private Limited R/O: F-9, First Floor, Manish Plaza-1, Plot No-7, Mlu,Sector-10,Dwarka,New Delhi- 110075	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person with Sh. S.C Malhotra (Advocate)	Complainant
Sh. Pankaj Chandola (Advocate)	Respondent

**ORDER**  
**GURUGRAM**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of

the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

#### A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of the project	"The Heartsong", Sector 108 , Gurugram
2.	Nature of the project	Residential
3.	Registered / not registered	306 of 2017 dated 17.10.2017 valid upto 16.10.2018.
4.	Application Form	21.11.2012 (Page 26 of reply)
5.	Allotment letter	03.12.2012 (Annexure R 3 at page 47 of reply)
6.	Unit no.	41, 4 <sup>th</sup> floor tower A1 (Page 41 of reply)
7.	Unit admeasuring	1283 sq. ft. (Page 41 of reply)
8.	Date of execution of buyer's agreement	Not Executed
9.	Possession clause	Estimated project completion schedule  (13) Subject to the terms of this and charges by the Applicant Matured to timely payment of Total Sale Consideration stamp duty and other costs and charges by the Applicant, "Force Majeure and subject to the Applicant having complied with the necessary

		<p>formalities and the documentation as may be prescribed by the Company from time to time and especially, as may be prescribed in the Notice of Possession, the Company shall endeavor to hand over the possession of the Apartment within a period of 36 (thirty-six months from the date of execution of the Agreement or any revision in the sanctioned Building Plans, whichever is later Commitment Period"). The Applicant further accepts, agrees and understands that in addition, a period of 180 (one hundred and eighty) days ("Grace Period"), her expiry of the Commitment Period will be available to the Company to account for unforeseen circumstances Project uncertainties. Subject to receipt of the Occupation Certificate upon completion of the Project, the Company shall issue a notice of offer of possession ("Notice of Possession") requiring the Applicant to me possession of the Apartment within a time period as may be specified therein subject to the full payment of the Total Sale Consideration for the Apartment, procurement of stamp papers, execution of Conveyance Deed, payment of registration charges for registration of the Conveyance Deed and other cous charges, deposits, dues, duties, interest, Holding Charges interest on delayed payments, taxes, etc. against the said Apartment Project as may then be applicable</p> <p>(At page 36 of reply)</p>
<p>10.</p>	<p>Due date of delivery of possession</p>	<p>Though it can't be ascertained from the facts of the case in the absence of buyer's agreement but being taken from connected matter of the same project</p>

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		bearing complaint no. 661 of 2019 decided on 16.05.2019 The due date comes out to be as 19.10.2016
11.	Total sale consideration	Rs. 82,95,076 (On page no. 48 of reply)
12.	Total amount paid by the complainant	Rs. 20,73,670/- (As per CRA form)
13.	Reminder letter	26.02.2015, 13.03.2015, 27.03.2015, 20.04.2015, 11.06.2015, 01.07.2015, 31.07.2015, 07.09.2015, 24.08.2015, 08.06.2016, 08.07.2016, 07.07.2016, 30.07.2016, 06.08.2016, 16.08.2016, 29.08.2016, 13.09.2016
14.	Surrender of the unit by complainant	11.01.2017 (Page 39 of complaint)
15.	Occupation certificate	02.03.2017 (Page 125 of reply)
16.	Possession Notice	04.03.2017 (Page 38 of the complaint)
17.	Possession Reminder	18.05.2017 (Page 38 of complaint)
18.	Cancellation letter	19/29.07.2017 (Page 127 of reply)

**B. Facts of the complaint:**

3. That a project by the name of "THE HEARTSONG" situated in sector 108, Gurugram was advertised by the respondent. The complainant coming to know about the same applied for the allotment of a residential apartment vide application dated 20.11.2012.

4. The allotment to the unit was done on 03.12.2012 vide which the complainant was allotted unit. A 1/0401 tower A1 . As per the allotment letter the total cost payable by complainant in respect of said apartment was Rs. 82,95,076/-.
5. That the said apartment was booked as per payment plan which was construction linked in which certain amounts of BSP were payable on booking application, thereafter second instalment after 30 days of application and the third instalment within 60 days of application and further allotment has been detailed in the payment plan.
6. That, although no builder buyer agreement was executed between the parties, but, keen to acquire the above said apartment, complainant has already paid an amount of Rs 20,73,670/- as per demand raised by respondent from time to time. The last payment was made by complainant on 30.07.2016. The due date cannot be ascertained. The complainant has already paid an amount of Rs. 20,73,670/- till date.
7. That, as per the terms and the conditions advertised by respondent in respect of the above said project and also explained to complainant through the provisional allotment letter dated 03.12.2012, the said apartment was to be handed over to complainant within a period of three years from the date of booking, but, it is a matter of record that neither the said project was completed nor complainant was handed over the possession of the allotted apartment within the stipulated period of three years which expired on 03.12.2015.
8. That, as per the actual status of the project, the company has started handing over the possession of incomplete flats to the innocent

buyers who had been suffering both ~~mentally~~ and financially due to the delay on part of the respondent in handing over the possession within the stipulated time leaving the said buyers with no other choice but to accept the possession of incomplete flats. In fact, as per the information gathered by the petitioner, the respondent company has also not obtained the necessary occupancy/ completion certificate from the concern statutory authority.

9. That, respondent's above said conduct/ omissions leading to non-handing over of the possession of the allotted apartment to complainant, clearly indicates that respondent utilized the amount of Rs. 20,73,670/- towards respondent's other projects/ investments by diverting the funds paid by complainant and other similarity placed customers to such other project.
10. The complainant got a legal notice dated 11.01.2017 issued to respondent's to his counsel Shri Sudhir Mahajan informing the respondents that he is no more interested in the said flat due to due delay in getting the possession and requesting it to refund the above said amount. The said notice was duly received by respondent and replied through its counsel Shri Manu Jain to the complainants' counsel on 18.03.2017. But the defendant company declined to refund the amount paid by the complaint until the date of issue of the said legal notice.
11. That, the reply received by the complainant from respondent's counsel Sh. Manu Jain dated 18.03.2017 against the above said legal noticed 11.01.2017 was totally vague, wherein the respondent counsel made false allegations against complainant by taking up only a threadout of some of the desperate emails send by him to it

dated 26.12.2014, 30.07.2015 and 17.08.2015, wherein overlooking various other aspect of hardships faced by the complainant, he used only some part of the text of his emails and has stated that complainant had invested in the above said project only with a speculative intent with a view to earn quick profits.

12. That, seeing no positive response to his written/ verbal requests including legal Notices, the complainant was constrained to issue another legal notice to the respondent, through counsel on 05.07.2021, calling upon it to refund an amount 20,73,670/- with interest @ 18 % per annum.
13. That the aforesaid legal notice was sent through speed post on 06.07.2021. As per the tracking report available on the website of the post, the notice sent through courier was showing item "DELIVERED" only on one of respondent's address. However, the respondent, true to its conduct did not reply the same.
14. That, in the mentioned reply of Sh. Manu Jain it was clearly admitted that it had received duly filled application form dated 20.11.2012 from complainant along with a sum of Rs 7,00,000 (Rupees Seven Lac only) towards the booking amount. It has been further admitted by respondent's counsel in the said reply that, although, complainant was provisionally allotted apartment no. A1/0401 having Sale Area of 1283 Sq. Ft but no "apartment buyer agreement" had been signed by complainant as on date.
15. That, in the mentioned reply dated 18.03.2017, the respondent's counsel also admitted that occupation certificate for the second phase of the project was received by the respondent only on 02.03.2017, which date is much beyond the stipulated period of 3

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Years from the booking of said apartment and the said period, in the instant case, had expired on 03.12.2015.

16. That, instead of responding to the genuine demand of complainant for refund of his hard earn money paid to respondent towards allotment of the mentioned apartment, he was further shocked when he was informed by respondent about cancellation of his allotment of the said apartment and forfeiture of an amount of Rs 20,35,305/- admittedly paid by him to it and also demanding an additional balance amount of Rs 25,20,712/- as interest recoverable from complainant and showing the amount refundable as nil, vide respondent letter dated 18.07.2017, without any reference number.
17. That, seeing the total negative response from respondent, complainant filed a recovery suit against respondent for recovery of Rs 32,92,000/- including interest vide CS (Comm) 124 /2019, before the District Judge Commercial court, North East District, Rohini Court, in which case respondent as defendant, filed an application under Section 8 of the Arbitration and Conciliation Act 1996, which was disposed of on 20<sup>th</sup> Feb 2021, by allowing the said application and referring the parties to arbitration. However, till date the complainant has not heard anything from the respondent regarding the appointment of any Arbitrator as directed by the Hon'ble court in its order dt. 20<sup>th</sup> Feb 2021, and commencement of consequential proceeding under said arbitration.
18. That Respondent failed to hand over the possession of the said apartment to the complainant as per terms and conditions of the said agreement.

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19. That the complainant has sent legal notices stating he is no more interest in the unit because of the delay for getting the possession and on the basis of the real estate sector was under pressure leading to filing of this complaint for refund of the paid-up amount.

**C. Relief sought by the complainant:**

20. The complainants have sought the following relief(s):

- i. Direct the respondent - builder to refund the paid-up amount.
- ii. Direct the respondent to pay Rs. 5,00,000/- for compensation and harassment and Rs. 2,00,000 on account of litigation.

**D. Reply by respondent:**

The answering respondent by way of written reply made the following submissions:

21. That the complainant was an allottee of the above-mentioned unit for a total sale consideration of Rs. 82,95,076/- and had applied for allotment of the plot on 03.12.2012 against his booking done through the booking application form dated 21.11.2012.

22. That on 30.04.2013 the respondent has initially sent two copies of the ABA along with a covering letter to the complainant to be duly signed, attached photograph, and send back to it to enable processing of the same. The said letter along with the ABA was duly received by the complainant who fraudulently with a malafide intention did not execute the ABA nor sent it back to the Respondent.

23. That thereafter, the respondent sent several reminders to the complainant to execute the ABA on 06.08.2013, 24.10.2013,

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23.01.2015, 15.05.2015. It is humbly submitted that despite several reminders and request by the respondent, the complainant never returned the duly signed copies of the ABA and ignored all the letters of the respondent,

24. That the complainant has been in blatant violation of Section 19(6) of the RERA Act, 2016 as he has failed to pay the due instalments on time against the sale consideration amount payable towards the Unit. The complainant has opted for construction linked plan and the respondent accordingly raised the demands on achievement of relevant milestones. However, not a single instalment has been paid in full or on time by the complainant. Further, from the year 2015 the payments have been completely stopped. It is submitted that all the demands raised by the respondent were strictly as per the payment schedule annexed with the provisional allotment letter dated 03.12.2012.
25. That the last payment received from the complainant was on 03.06.2015 which was also in deficit of Rs. 30,20,506/-. After that the respondent continued to send demand and reminder letters to the complainant to pay the dues vide letters dated 26.02.2015, 13.03.2015, 27.03.2015, 20.04.2015, 11.06.2015, 01.07.2015, 31.07.2015, 07.09.2015, 24.08.2015, 08.06.2016, 08.07.2016, 07.07.2016, 30.07.2016, 06.08.2016, 16.08.2016, 29.08.2016, 13.09.2016 respectively but with no positive results.
26. That the occupation certificate for the tower wherein the unit of the complainant is located was received on 02.03.2017. The Schedule V- Clause 6 Application Acceptance at Company's Discretion- of the Application Form, clearly stated that in the event of default on the part of the complainant, the respondent shall have the right to

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terminate the agreement under a notice to the complainant and the respondent shall be forfeiting the amount of earnest money.

27. It is further submitted that as per Schedule V- Clause 20 timely payment- of the application form, if the complainant defaults in payment of any amount due and payable then the respondent shall have the right to cancel the allotment of the apartment and forfeit the amounts paid by the complainant.
28. That the complainant utterly failed in its obligation to pay the due instalments even after the occupation Certificate was issued by the competent authority. Thus the respondent was left with no option but to cancel the provisional allotment and forfeit the amounts paid by the complainant in accordance with the agreed terms and conditions of the application form and provisional allotment as well in terms of the ABA which the complainant failed to execute. Therefore, the provisional allotment was cancelled vide Letter dated 29.07.2017 and the complainant was left with no right, title or interest whatsoever in the Unit.
29. That the brokerage for the said unit allotted to the complainant has already been paid to the concerned broker which is non-refundable even after the unit has been cancelled. Further, if the cancelled Unit is sold in future, then again brokerage has to be paid by the respondent to the concerned broker, irrespective of payment in the past as the broker will again be investing time and resources to identify new prospective allottees. Therefore, the said charges have been deducted.
30. That similarly the marketing and advertising fee incurred on the unit for allotment and sale to the complainant has been deducted as these expenditures have to be again incurred to locate and

identify new prospective allottees so that the cancelled unit may be re-allotted afresh. Therefore, these types of expenditure are non-refundable as the respondent has to again sustain the cost for the second time for the same unit.

31. That the complainant had booked the Unit with a speculative intention with the motive to earn quick profits. However, due to slow down in the real estate market and upon realising the same, he sought to withdraw and exit from the allotment and thereby has filed this present complaint with a malafide intention.
32. That the present complaint is barred by law of limitation as the respondent had cancelled the provisional allotment of the Unit to the complainant on 29.07.2017 itself. Now the complainant after expiry of almost 5 years from the date of cancellation of the allotment of the unit, has filed the present complaint allegedly claiming refund of the amount which is in itself an abuse of the process of law and highly delayed.
33. That on the perusal of the aforementioned provision, the legislative intention on the aspect of "Limitation" is abundantly clear. It is pertinent to mention that the Legislature has explicitly kept out any compensation sought under the provisions of Section 18(2) of the RERA Act, 2016 from the ambit of Limitation however, claim(s)/compensation or interest arising by the virtue of Section 18 (1) & (3) of the RERA Act, 2016 are not immunized from the bar of Limitation.
34. That it is further relevant to read the abovementioned provisions of the Limitation Act in the light of Section 88 of the RERA Act 2016. Therefore, it is abundantly clear that the period of Limitation shall be deemed to be 3 years. It is further clarified that in case there is a

cancellation by the Respondent the period of limitation shall in that case also commences on the date the allotment was cancelled and will end on the date 3 years have elapsed from the date Limitation had commenced.

35. Therefore, in continuation of the above submissions, the Ld. Authority is bound by law to dismiss a time-barred complaint. It is also to be noted that the present complaint is frivolous and vexatious litigation trying to reinvent a wheel to extract monies with malicious intent.
36. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Ld. Authority. That present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
37. All other averments made in the complaint were denied in toto.
38. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

39. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire

Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E. II Subject matter jurisdiction**

40. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

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#### **(4) The promoter shall-**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

41. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

- A** 42. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in

view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR(C)357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

43. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant:**

**F.1 Direct the respondent - builder to refund the paid-up amount**

44. The complainant-allottees booked a residential plot in the project of the respondent named as "The Heartsong" situated at sector 108-A, Gurgaon, Haryana for a total sale consideration of Rs. 82,95,076/-. The allotment of the unit was made on 03.12.2012. Moreover, buyer's agreement was not executed between the parties and so the due date for possession can't be ascertained as such. But the same is being taken from a connected complaint of the same project bearing no. 661 of 2019 decided on 16.05.2019 wherein the date of execution of apartment buyer agreement was mentioned as 19.04.2013 and the due date was fixed as 19.10.2016.
45. The respondent started raising payments demands from the complainant from the year 2015 but they defaulted to make the payments. The complainant-allottee in total has made a payment of Rs. 20,73,670/-. The respondent has sent various demand letters and reminder letters on 26.02.2015, 13.03.2015, 27.03.2015, 20.04.2015, 11.06.2015, 01.07.2015, 31.07.2015, 07.09.2015, 24.08.2015, 08.06.2016, 08.07.2016, 07.07.2016, 30.07.2016, 06.08.2016, 16.08.2016, 29.08.2016, 13.09.2016. Thereafter the respondent cancelled the allotment of the plot vide letter dated 19/29.07.2017. The occupation certificate of the tower where the allotted unit is situated has been received on 02.03.2017.
46. The complainant made request to the respondent-builder through legal notice dated 11.01.2017 i.e., seeking refund against the allotted unit. But instead of taking any action on that representation and refunding the paid up amount, the allotment of the subject unit was cancelled on 19/29.07.2017 forfeiting the whole amount as per clause 5.1 of the agreement. As per the settled law of the land in the various pronouncements of the Hon'ble Apex Court and as per



Regulation 11(5) of 2018 known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder), the respondent could have deducted 10% of the basic sale consideration from the paid-up amount and was bound to return the remaining amount. But in the case in hand, the order forfeiting the earnest money besides other charges from the paid up amount was made by the respondent - builder on 19/29.07.2017 and the complaint to challenge that action was filed on 05.05.2022 i.e after a gap of about 5 years . But it has come in the pleadings that the complainant filed a suit for recovery bearing CS / (Comm) 124 / 2019 before District Judge, Commercial Courts, Rohini and the same being disposed off on 20.02.2021 referring the matter in dispute to Arbitration but nothing concrete came out leading to filing of the complaint . If there has been any positive results from that litigation, then the complainant would not have approached the authority seeking refund . But after waiting for some time, he filed the present complaint seeking refund of the paid up amount being recurring cause of action against the respondent and thus the complaint can't be held to be barred by limitation . The position would have been different if the complainant had not approached another forum to seek refund of the paid up amount . He was pursuing his legal remedy before the civil courts at Rohini, New Delhi . Even on an application moved by respondent, the matter was referred to Arbitration on 20.02.2021 .But without any positive results leading to filing of the present complaint in May 2022 .

- A** 47. The due date for completion of the project and offer of possession of the allotted unit was 19.10.2016. Though the complainant did not pay the amount due despite a number of reminders as detailed

earlier but withdrew from the project by sending a undated legal notice and reply to the same was received from the builder on 18.03.2017 . Thus it is not disputed by the builder that it received a legal notice dated 11.01.2017 from the complainant withdrawing from the project and seeking refund of the paid up amount . Though occupation certificate was received on 02.03.2017 and possession of the allotted unit was offered to the complainant vide letter dated 04.03.2017 but he had already withdrawn from the project and thus is entitled to seek refund of the paid up amount besides interest as per the provisions of Section 18(1) (a) of the Act of 2016.

48. It is contended on behalf of respondent that the complaint seeking refund is barred by the principle of Res Judicata as well as limitation and as such the same is liable to be rejected . But both the pleas advanced in this regard are devoid of merit . No doubt the complainant earlier filed a civil suit seeking recovery of the paid up amount but the same was referred to arbitration by the District Judge (Comm Court) Rohini, New Delhi vide orders dated 20.02.2021. But despite passing that order nothing was heard from the side of respondent. It neither take any steps for appointment of arbitrator nor proceeded in this regard despite sufficient wait by the complainant. So in such a situation , the complainant was left with no alternate but to approach the Authority for the desired relief and the complaint filed in this regard is not hit by the provisions of Section 11 Cpc . Secondly the contention of the respondent that the complaint is barred by limitation is also untenable . No doubt the cause of action to the complainant arose on 29.07.2017 i.e from the date of cancellation of allotment but he



filed a suit seeking recovery of the paid up amount before District Judge (Comm Courts) Rohini , New Delhi In the year 17.05.2019 and the same was disposed off on 20.01.2021 . When nothing materialised as per the directions of the court , the complainant filed the present complaint seeking refund of the paid up amount and the cause of action in his favour was recurring one and can't be fettered by the law of limitation . It is not the case of complainant that he remained silent about his rights and did not knock the doors of either of the authority. He had been diligently pursuing the remedy as per the legal advice and there thus no negligence on his part in any manner .

49. Thus in the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is maintainable and can't be rejected as submitted by the respondent . So the complainant is entitled to refund of the paid up amount besides interest at the prescribed rate .
50. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 20,73,670/-with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**F.II Direct the respondent to pay Rs. 5,00,000/- for compensation and harassment and Rs. 2,00,000 on account of litigation.**

51. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal*

*titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

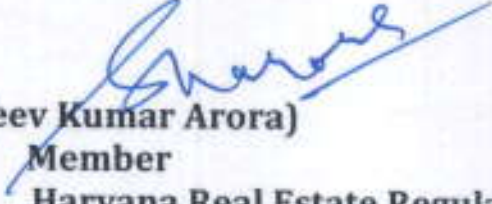
**G. Directions of the Authority:**

52. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- i) The respondent /promoter is directed to refund the amount received from the complainant i.e., Rs. 20,73,670/- along with interest at the rate of 10.60% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of amount.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

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53. Complaint stands disposed of.
54. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Vijay Kumar Goyal)  
Member

Dated: 02.02.2023



**HARERA**  
**GURUGRAM**